IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3405 OF 2004

IN

SUIT NO.3343 OF 2004

...

Mr.Antonio John Serrao & Anr ...Plaintiffs

v/s.

Mrs.Sylvia Joseph Serrao & ors. ...Defendants

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Mrs.Nipa D. Singh i/b Mahesh Menon & Co. for the Plaintiffs.

Mr.Y.R.Shah for the Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 30TH SEPTEMBER,2005

P.C.:

1. This notice of motion is taken out by the Plaintiffs. The Plaintiffs in the suit claim a decree of eviction against the Defendants. According to the Plaintiff No.1, the suit flat was owned by her husband. The share certificate issued by the Co.operative Society in relation to the flat stood in her husband's name. After his death, the share certificate has been transferred in the name of the Plaintiff No.1.

2. The Defendants are legal heirs of the brother of the deceased husband of the Plaintiff No.1. Though they claim that they are joint owners of the flat, they have not placed any document on record which will even suggest that they are joint owners of the flat. The share certificate issued by the society is prima facie evidence of the ownership. Though the Defendants are claiming that they are staying in the flat, they never objected to the share certificate of the flat being issued in favour of the deceased husband of the Plaintiff No.1. They never objected

even when, after the death of John/ the husband of Plaintiff No.1, share certificate was transferred in favour of the Plaintiff No.1. This conduct of the Defendants is clearly against their case that they are the joint owners of the flat. Merely, because they were permitted by the husband of the Plaintiff No.1 and after his death, by the Plaintiff No.1 to stay in the flat they do not get any legal right to continue to occupy the flat. As the Defendants do not have any legal rights to continue to occupy the flat and as the Plaintiff No.1, who is the owner of the flat, finds their continuation in the flat inconvenient, in my opinion, the Plaintiff No.1 is entitled to temporary injunction sought by the Plaintiffs. The Plaintiff No.1 has pointed out that the Defendants have acquired some other accommodation, still they insist on continuation of the suit flat just to harass the Plaintiffs.

3. As I find that the Defendants have no rights whatsoever to continue to occupy the flat, in my opinion, it will be appropriate to grant interim order in terms of prayer clause (a). Notice of Motion is, therefore, granted in terms of prayer clause (a).

4. I repeatedly put it to the learned Counsel appearing for the Defendants, whether the Defendants want any time to be granted to them to vacate the flat, he did not seek any time to vacate the flat.

Notice of Motion disposed of.

At this stage a request is made for staying the operation of the order. As by the order I have granted mandatory injunction, operation of the order is stayed for a period of four weeks. However, during this period, interim order in terms of prayer clause (b) shall operate.

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